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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,097

01/26/2006

Lysander Chrisstoffels

12810-00104-US

6415

23416

7590

04/15/2009

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EXAMINER

PEZZUTO, HELEN LEE

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

04/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,097	Applicant(s) CHRISSTOFFELS ET AL.	
	Examiner Helen L. Pezzuto	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 18-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-32 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-17 in the reply filed on 4/6/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

The examiner acknowledges applicant's request for rejoinder of claims 18-21 upon the allowance of claims 1-17.

2. Claims 15, and 18-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/6/09.

Currently, claims 1-14, 16-17 are under consideration in this application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 11 recites the broad recitation 300 to 100,000, and the claim also recites 1,000 to 30,000 and 1,000 to 10,000

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which is the narrower statement of the range/limitation. The recited "preferably...in particular..." renders claim 11 indefinite.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-13, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beyer et al. (US-590) in view of Hosoda et al. (US-600).

US 6,528,590 to Beyer et al. discloses a process for the preparation of aqueous dispersion comprising the polymerization of ethylenically unsaturated monomers to form a copolymer, in the presence of component B, emulsifier C and protective colloids D. Specifically, US-590 discloses a mixture of ethylenically unsaturated monomers comprising at least one ester of monoethylenically unsaturated carboxylic acid (a), at least one monoethylenically unsaturated mono or dibasic acid (b), at least one crosslinking monomer (c), and at least one other

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copolymerizable monoethylenically unsaturated monomer (d). Suitable monomer (b) and (d) include vinylcarboxamide, acrylamidoglycolic acid, (meth)acrylamides, N-vinylformamide and N-vinylpyrrolidone, within the scope of the instant monomer (a) (col. 3, lines 9-31; col. 4, lines 1-2). Suitable crosslinking monomers (c) are taught within the scope of the instant crosslinker (d) (col. 3, lines 32-58). Prior art teaches polymerization of the respective monomers in an aqueous medium in the presence of initiator, emulsifiers, regulators and protective colloids such as carboxymethylcellulose, polyvinyl alcohol, and polypyrrolidone within the scope of the instant polymeric dispersant (b) (col. 5, lines 13-61). The instant polymeric precipitation agent (c) falls within the scope of prior art emulsifiers (c) and other dispersion auxiliaries such as plasticizers (col. 4, lines 58-65; col. 6, lines 43-53). A skilled artisan would recognize the conventional use of polyalkylene glycol such as PEG as emulsifiers and plasticizers. In any event, it would have been obvious to one having ordinary skill in the art to use a mixture of Polyethylene glycol, polyvinyl alcohol and polyvinylpyrrolidone as polymeric dispersant/protective colloids in the preparation of aqueous dispersion as taught

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in US 4,380,600 to Hosoda. Analogous US-600 specifically teaches the preparation of aqueous dispersion by polymerizing ethylenically unsaturated monomers in the presence of a water-soluble polymer, wherein polyethylene glycol, polyvinyl alcohol and polyvinylpyrrolidone are disclosed to be suitable polymer equivalents to be used alone or in mixture (see US-600, col. 5, lines 38-65). Accordingly, it would have been obvious to one having ordinary skill in the art to prepare an aqueous dispersion by polymerizing the mixture of ethylenically unsaturated monomers in the presence of a mixture of polyethylene glycol, and polyvinyl alcohol or polyvinylpyrrolidone, motivated by the reasonable expectation of success in preparing an aqueous dispersion having good stability and fluidity/flowability as taught.

8. Claims 1-17 rejected under 35 U.S.C. 103(a) as being obvious over Angel et al. (US-293) in view of Beyer et al (US-590).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any

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invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(1)(1) and § 706.02(1)(2).

US 6,770,293 to Angel et al. discloses the preparation of soft capsules comprising polymers derived from free radical polymerization of at least one vinyl ester and other ethylenically unsaturated comonomers in the presence of polyether (col. 13, lines 44-59). Specifically, suitable monomers include vinyl esters and comonomers such as vinylformamide, vinylmethacrylamide, vinylpyrrolidone, N-vinylimidazole, diallylamine, (meth)acrylamide and mixture

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thereof within the scope of the instant monomers (a) and (e) (col. 7, line 66 to col. 9, line 25). US-293 further discloses crosslinkers, regulators, neutralizing agents, emulsifier and protective colloids such as polyvinyl alcohol (col. 10, line 25 to col. 12, line 26, col. 13, lines 34-38). Suitable polymerization solvents include water, wherein the resultant product is an aqueous polymer dispersion (col. 13, line 24-38). Accordingly, it would have been obvious to one having ordinary skill in the art to prepare an aqueous dispersion via polymerization of ethylenically unsaturated monomers in the presence of polyether, regulator, crosslinkers, and protective colloids as taught, motivated by the reasonable expectation of success. Furthermore, one skilled in the art would readily envisage selecting polyvinylpyrrolidone in place of or in admixture with polyvinyl alcohol as they are well known to be protective colloids equivalents, as taught in analogous US 6,528,590 to Beyer et al. Thus, rendering obvious the present claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L. Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen L. Pezzuto/
Primary Examiner
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hlp